

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

MARY DAVIDSON and JOEL
CHRISTIANSEN,

Plaintiffs,

vs.

DOLLAR TREE STORES, INC., DAN
CASTRO, CINDY CHARITY, FRANKIE
PAYNE, MIKE IVANICH, and SUE
STEVENS,

Defendants.

MEMORANDUM DECISION AND
ORDER DENYING PLAINTIFFS'
MOTION TO ALTER JUDGMENT
OR, IN THE ALTERNATIVE, TO
RELIEVE PLAINTIFFS FROM
FINAL JUDGMENT

Case No. 2:10-CV-260 TS

The Court has before it Plaintiffs Mary Davidson and Joel Christiansen's Motion to Alter Judgment or, in the alternative, to Relieve Plaintiffs from Final Judgment.¹ For the reasons set forth below, the Court will deny the Motion.

¹Docket No. 34.

This Court recently dismissed Plaintiffs' claims against Defendant Dollar Tree Stores, Inc. ("Dollar Tree") because Plaintiffs filed their claims in violation of 29 U.S.C. § 626(d), leaving this Court without subject matter jurisdiction over Plaintiffs' claims.² Plaintiffs now contend that the Court should reconsider this decision under Fed.R.Civ.P. 59(e) and 60.

Under Rule 59(e),

Grounds warranting a motion to reconsider include (1) an intervening change in the controlling law, (2) new evidence previously unavailable, and (3) the need to correct clear error or prevent manifest injustice. Thus, a motion for reconsideration is appropriate where the court has misapprehended the facts, a party's position, or the controlling law.³

Similarly, under Rule 60(b), a Court may order relief from final judgment for, *inter alia*, "mistake, inadvertence, surprise, or excusable neglect," and "any other reason that justifies relief."⁴

Plaintiffs contend that the Court's Order dismissing their claims against Dollar Tree must be reconsidered to prevent manifest injustice. In reviewing Plaintiffs' arguments, however, the Court finds that Plaintiffs' Motion is simply an attempt to reargue the merits of the underlying Motion to Dismiss. Such an attempt is inappropriate and must be rejected. As stated by the Tenth Circuit, "a motion for reconsideration and a successive Rule 60(b) motion . . . are inappropriate vehicles to reargue an issue previously addressed by the court when the motion

²See Docket No. 31.

³*Servants of Paraclete v. Does*, 204 F.3d 1005, 1012 (10th Cir. 2000).

⁴Fed.R.Civ.P. 60(b)(1) & (6).

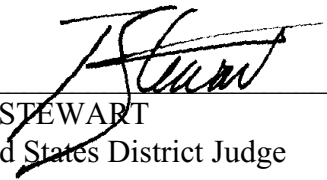
merely advances new arguments, or supporting facts which were available at the time of the original motion.”⁵ The Court, therefore, finds that Plaintiffs’ Motion fails and will be denied.

It is therefore

ORDERED that Plaintiffs’ Motion to Alter Judgement or, in the alternative, to Relieve Plaintiffs from Final Judgment (Docket No. 34) is DENIED.

DATED June 7, 2011.

BY THE COURT:



TED STEWART
United States District Judge

⁵*Servants of Paraclete*, 204 F.3d at 1012.